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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gary Strawn

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EXAMINER

PHILLIPS, HASSAN A

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/738,749

Applicant(s)

STRAWN, GARY

Examiner

Hassan Phillips

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to communications filed November 1, 2005.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 69, 74, 75, are rejected under 35 U.S.C. 101 because the claimed inventions are directed to non-statutory subject matter. A computer program product, and a computer usable medium as defined by Applicants specification (pg. 15, lines 11-22), is not a new and useful process, machine, manufacture, or composition of matter.

Response to Arguments

4. Applicant's arguments filed November 1, 2005 have been fully considered but they are not persuasive. Applicant argued that:

- a) One having ordinary skill in the art would not be motivated to look to Welter in order to solve problems relating to determining of the health status of selected network devices in a data network;
- b) Welter does not teach or suggest performing format verification on a first portion of content information received from a network device by verifying at least one format of the first portion of content information using predetermined format verification rules.

- c) Welter does not teach or suggest taking any action in response to detecting any errors in the received HTML.

Examiner respectfully disagrees with Applicant's assertions.

5. Regarding item a), Examiner acknowledges that Applicant's invention is directed toward determining the health status of a network device and the teachings of Welter are directed toward determining the health status of a web site. Nevertheless, Examiner maintains that one of ordinary skill in the art would be motivated to look to Welter in order to solve problems relating to determining the health status of selected network devices in a data network because one of ordinary skill in the art detecting the health status of a network device would use similar methods to those taught by Welter (col. 7, line 66 to col. 8, line 6) in determining the health status of a web site. This is acknowledged by Applicant in the disclosure (page 3, lines 17-26) which states:

"According to conventional techniques, each of the servers in the server farm is periodically probed in order to determine whether the server is healthy and is operating properly. Conventionally, there are a variety of tests which may be performed in order to determine the health or status of a particular server in the server farm. As shown in the example FIGURE 1, health monitoring may be performed by a health monitoring agent or device 106a to determine which servers are active and healthy. For example, a selected

server may be pinged in order to verify that the selected server is on-line. A more qualitative status check involves transmitting a HTTP request to a selected server, and analyzing the data of the server's response in order to determine the health of the selected server."

6. Regarding item b), as indicated in the interview conducted with Applicant's representative, Examiner submits performing format verification on a first portion of content information received from a network device by verifying at least one format of the first portion of content information using predetermined format verification rules is implicit in the teachings of Welter. As acknowledged by Applicant in the disclosure (page 9, lines 4-9), and remarks (pages 12-13), regular expressions were well known in the art at the time of the present invention. Welter suggests performing format verification on a first portion of content information received from a network device by verifying at least one format of the first portion of content information using predetermined format verification rules where Welter recites "...an operation 211 which takes measures based on the HTTP request and response, **analyzes received HTML for expected content and errors using methods such as** matching against string values, **regular expressions**, and calculated values..." In the disclosure, Applicant gives an example using the claimed format verification rules (page 11, lines 1-31) where a web page reports time in the format: HH:MM AM/PM, where HH denotes the hours portion of the current time, and MM denotes the minutes portion of the current time.

Applicant further states that a regular expression would look like: ([1-9]|1[0-2]):[0-5][0-9](A|P)M and thus, a string reported from a web page in the format "3:06 PM" would be validated, but a string in the format "0:83 KM" would not be validated. Using this same example, Examiner submits that the teachings of Welter would suggest "3:06 PM" is ***expected content*** and "0:83 KM" is an ***error***.

7. Regarding item c), in the remarks (page 14), Applicant states in contrast to taking any action in response to detecting any errors in the received HTML, Welter specifically describes the step of aborting a test if an error is detected. Examiner respectfully submits Applicant has misinterpreted the prior art. Instead, Welter specifically teaches operation (211) detecting errors in received HTML and storing the results of the analyzation in a database, (col. 7, line 66 to col. 8, line 6, col. 2, lines 22-32). Examiner submits "storing the results in a database" is an action in response to detecting any errors in the received HTML.

8. Accordingly, the references supplied by the Examiner in the previous office action covers the claimed limitations. Applicant is requested to review the prior art of record for further consideration.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2151

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 55-57, 59, 74, 86, 87, are rejected under 35 U.S.C. 102(b) as being anticipated by Welter et al. (hereinafter Welter), U.S. Patent 6,138,157.

11. In considering claim 55, 74, and 86, Welter discloses a method, a computer program product, and a system for performing format verification of data received from a selected network device, the method computer program product, and system comprising: receiving data from the network device, said data including content information, (col. 8, lines 1-6); performing format verification on a first portion of said content information by verifying at least one format of the first portion of content information using predetermined format verification rules, (col. 8, lines 1-6); and determining whether any inconsistencies are detected in the at least one format of said first portion of content information, (col. 8, lines 1-6).

12. In considering claim 56 see Welter, col. 7, lines 66-67, and col. 8, lines 1-6.

13. In considering claims 57 and 87 see Welter, col. 8, lines 1-6.

14. In considering claim 59 see Welter, col. 8, lines 1-6.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 45-54, 61-73, 75-85, 89-96, are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Welter.

17. In considering claims 45, 61, 69, 75, 77, 89, 96, AAPA discloses it was well known in the art to have a method, computer program product, and system for determining a health status of a selected network device in a data network, the method, computer program product, and system comprising: receiving data from the network device, (page 3, lines 17-26); and, determining the health status of the network device based upon the data received from the network device, (page 3, lines 17-26).

Although AAPA shows substantial features of the claimed invention, it fails to explicitly disclose: performing format verification on a first portion of content information included in the data by verifying at least one format of the first portion of content information using predetermined format verification rules.

Nevertheless, in a similar field of endeavor, Welter teaches a method and apparatus for testing web sites comprising: receiving HTML data from a network device in response to a resource request, said data including content information, and

performing format verification on a first portion the content information included in the data by verifying at least one format of the first portion of content information using predetermined format verification rules, (col. 8, lines 1-6).

Thus, given the teachings of Welter it would have been obvious to a person of ordinary skill in the art to modify AAPA with Welter to show the data including content information and performing format verification on a first portion the content information included in the data by verifying at least one format of the first portion of content information using predetermined format verification rules. This would have advantageously provided an efficient means for determining the health or status of a particular server in a server farm, Welter col. 1, lines 29-35 and lines 43-47, AAPA, page 3, lines 19-20.

18. In considering claim 46, see AAPA, page 3, lines 17-26, also see Welter, col. 7, line 66 to col. 8, line 6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claim 45.

19. In considering claims 47, 62, 70, 76, 78, and 90, see Welter, col. 7, line 66 to col. 8, line 6, and col. 2, lines 22-32. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 45, 61, 69, 75, 77, and 89.

20. In considering claims 48, 71, and 79, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 45, 69, and 77.

21. In considering claims 49, 63, 72, 80, and 95, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 45, 61, 69, 77, and 89.

22. In considering claims 50, 64, 73, 81, see AAPA, page 3, lines 6-26.

23. In considering claims 51, 65, 82, and 91, see Welter, col. 8, lines 1-6. One of ordinary skill in the art would modify the teachings of AAPA with Welter for the same reasons indicated in claims 45, 61, 77, and 89.

24. In considering claims 52, 66, 83, and 92, see AAPA, page 4, lines 4-19.

25. In considering claims 53, 67, 84, and 93, see AAPA, page 4, line 29-page 5, line 5.

26. In considering claims 54, 68, 85, and 94, see AAPA, page 4, line 29-page 5, line 5.

27. Claims 58, 60, 88, are rejected under 35 U.S.C. 103(a) as being unpatentable over Welter in view of Applicant's Admitted Prior Art (AAPA).

28. In considering claims 58 and 88, although Welter shows substantial features of the claimed invention, it fails to explicitly disclose: the selected network device being in a load balanced server farm system.

Nevertheless, as admitted by Applicant, load balanced server farm systems were well known in the art at the time of the present invention, (page 3, lines 6-26).

Thus, it would have been obvious to a person of ordinary skill in the art to modify Welter with AAPA to show the selected server being in a load balanced server farm system. This would have advantageously provided desired content to a user more quickly allowing a user to perform content verification of received data more efficiently, AAPA, page 3, lines 6-8.

29. In considering claim 60, Welter further teaches determining the health status of a web site based upon results of said format verification, (col. 3, lines 61-65, col. 7, line 66 to col. 8, line 6).

Although Welter shows substantial features of the claimed invention, it fails to explicitly disclose: determining a health status of the network device based upon results of said format verification.

Nevertheless, as admitted by Applicant, determining the health status of a network device was well known in the art, (page 3, lines 17-26).

Thus, it would have been obvious to a person of ordinary skill in the art to modify Welter with AAPA to show determining a health status of the network device based upon results of said format verification. This would have advantageously allowed for verifying the server, on which the web site was running, was operating properly, AAPA, page 3, lines 17-26.

Conclusion

30. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is (571) 272-3940. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP/
1/18/06


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER